IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5765 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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V.M.SHAH
Versus
STATE OF GUJARAT & ORS AND ANOTHER

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Appearance :
MR BHARAT T RAO for the Petitioner
MR HEMANT MAKWANA, ASSTT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 14/12/2007

ORAL JUDGMENT

1. Heard the learned advocates for the parties.

2. The petitioner, under Article 226 of the Constitution of India, has challenged order dated 11.06.1993 reverting and relieving him to the post of Mamlatdar Class-II from the post of Deputy

Collector, on the ground that the State, though found him fit to be promoted to the post of Deputy Collector, acted for reverting him on account of the advice from the GPSC, which is capricious and, therefore, the same deserves to be quashed and set aside.

3. The facts, in brief, deserve to be set out as under:

3.1. The petitioner while serving as Mamlatdar came to be promoted to the post of Deputy Collector, vide notification dated 21.10.1989, alongiwth ten other Mamlatdars. The notification specifically contains condition that the promotions effected thereunder were purely temporary and subject to be withdrawn without notice at any time and consultation and consent from the Gujarat Public Service Commission (for short 'GPSC') as well as outcome of Special Civil Application Nos.1836 of 1982 and 5568 of 1987 pending in the Gujarat High Court.

3.2. The petitioner, thereafter, was discharging his duties as Deputy Collector. The State consulted the GPSC for approving selection and promotion of the petitioner and others who were promoted on ad-hoc basis, vide notification dated 21.10.1989. The GPSC, vide its communication dated 12.02.1990, unequivocally, opined against recommending the petitioner for being included in the select list of Deputy Collectors alongwith five others. The State

once again requested the GPSC to reconsider the cases of persons like the petitioner for being continued as Deputy Collector pursuant to their selection and promotion on ad-hoc basis. The GPSC once again reiterated its view in respect of the petitioner's non-suitability for the post of Deputy Collector. The said communication was dated 15.05.1991. As the GPSC twice declined to agree with the proposal of the State, the State issued order on 11.6.1993, reverting the petitioner to the post of Mammlatdar, which he held prior to his promotion as Deputy Collector. The petitioner relieved on 14.6.1993, as per the communication of the same date put on record. The reversion and non-continuation of the petitioner is impugned in this petition.

4. Shri B.T. Rao, learned advocate appearing for the petitioner, submitted that the petitioner was permitted to discharge his duties as Deputy Collector pursuant to his promotion in the year 1989 and when he was to retire on attaining the age of superannuation, in the year 1994, he was reverted on 11.6.1993 and relieved on 14.6.1993. Learned advocate Shri Rao submitted that it was not obligatory on the part of the State to act upon the advice of the Public Service Commission, especially when the petitioner was found to be fit for promotion and the State did recommend the case of the petitioner for inclusion in the select list for promotion to the post of Deputy Collector.

5. Learned advocate Shri Rao submitted that there were many officers, who did not have similar records, continued and recommended to be included in the select list of the Deputy Collector. Learned advocate Shri Rao submitted that there are cases where even integrity was said to be not beyond doubt of officers who were permitted to be included in the select list and, therefore, this action of the State smacks of arbitrariness deserving to be quashed and set aside.

6. Shri Hemant Makwana, learned Assistant Government Pleader, submitted that the petitioner though was recommended for promotion and, in fact, promoted on ad-hoc basis subject to the approval from the GPSC, had no right to be continued on the post once the GPSC declined to accept the proposal of the State. The post of Deputy Collector is manned by the officers and the Mamlatdars having excellent record of proved merit and efficiency. The GPSC considered their records and as there were adverse entries on the record of the petitioner, for the relevant years, the GPSC did not agree to accept the proposal of selecting him and promoting him to the post of Deputy Collector. As the petitioner has no right to be continued, the impugned orders are just and proper and the Court may not interfere under Article 226 of the Constitution of India.

7. This Court has heard the learned advocates for

the petitioners and perused the record. It deserves to be noted that the petitioner did have adverse entries in his Confidential Reports for the relevant years, i.e. 1983-1984 to 1988-1989. Even the Confidential Reports also did not show any outstanding or excellent performance on the part of the petitioner. As could be seen from the communication of the GPSC, the petitioner's record did not show any material which could classify the petitioner to be an officer fit to be promoted to the post of Deputy Collector. The post of Deputy Collector being a post to be filled in by way of promotion of officers of proved merit and efficiency. The petitioner was required to be assessed in light thereof. The State has all right to accept the recommendation of the GPSC. The GPSC has not been joined as party respondent. However, from the communication of the GPSC, it could be seen that the GPSC has found him unfit for being included in the select list of Deputy Collector. The petitioner did not have any right to be continued on the post as very notification dated 21.10.1989, where-under he came to be promoted on purely ad-hoc basis, contains condition that his promotion was subject to the outcome of two litigations pending in the Court and also subject to the GPSC's consultation and advice as the GPSC has not agreed to the proposal, the petitioner was required to be reverted.

8. The action of reversion, therefore, cannot be said to be in any way illegal or unjustified nor

the action of non-continuation of the petitioner as Deputy Collector could be dubbed to be in any way illegal and/or contrary to law. The petition, therefore, deserves to be dismissed as bereft of merit and accordingly, the same is dismissed. Rule is discharged. No cost. Interim relief, if any, stands vacated.

(S.R.BRAHMBHATT, J.)

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